United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 17-0835**
	)	**Issued: December 27, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION LOMA LINDA HEALTHCARE SYSTEM, Loma Linda, CA, Employer	)	

Appearances:
Daniel Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 3, 2017 appellant, through counsel, filed a timely appeal from a November 30, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on June 5, 2015, as alleged.

FACTUAL HISTORY

On September 9, 2015 appellant, then a 63-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2015 at 4:05 p.m. she sustained a right ankle, right Achilles, right shoulder joint, lower back and hip, and bilateral radiculopathy injury in the performance of duty.[3] While descending the steps, she alleged that "the last step" was covered with duck poop so she tried to skip it, but misjudged the distance, causing her to twist her right ankle, right shoulder, and lower back from hanging on to the bannister. Appellant first received medical care on June 9, 2015. On the reverse side of the claim form, J.P., appellant's supervisor, indicated that she was first notified on September 8, 2015. She controverted the claim, noting that appellant was on the way to the parking lot at the end of her shift, that the injury was not reported within 30 days, and that she provided varying accounts regarding the injury.

By letter dated September 15, 2015, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the factual and medical evidence needed and asked to respond within 30 days. OWCP informed her that the evidence submitted was insufficient to establish that she actually experienced the incident or employment factor alleged to have caused injury, that she was injured in the performance of duty, there was no diagnosis of any condition, nor was there a physician's opinion as to the cause of her injury. It provided a questionnaire for completion and requested that she submit a response in order to substantiate the factual basis of her claim.

In another letter dated September 15, 2015, OWCP requested that the employing establishment respond to several questions regarding such matters as the location of appellant's claimed injury, the ownership of the parking lot facilities, whether parking spaces were assigned, whether the lot was accessible to the public, and whether appellant was required to park in the lot.

[3] The Board notes that appellant has two prior traumatic injury claims and one prior occupational disease claim. On October 7, 2008 appellant filed a Form CA-1 traumatic injury claim alleging that on September 18, 2008 she sustained a medial collateral tear of the left knee and muscle strain when gravel and sand were covering an oil spill in the parking garage, OWCP File No. xxxxxx821. By decision dated November 28, 2008, OWCP denied appellant's claim finding that she failed to establish a firm medical diagnosis which could be connected to the accepted employment incident. In another traumatic injury claim, appellant reported that on March 24, 2011 she sustained a back injury when moving a patient onto a gurney and had to prevent him from falling. OWCP accepted the claim for sprain of lumbar back and lumbosacral spondylosis (temporary aggravation) under OWCP File No. xxxxxx219. Appellant continues to receive medical treatment under this claim. On May 16, 2014 appellant filed an occupational disease claim (Form CA-2) which was accepted for lumbar sprain and lumbosacral spondylosis without myelopathy under OWCP File No. xxxxxx199. On March 17, 2016 OWCP terminated appellant's compensation benefits, finding that she did not continue to suffer disability or require further medical treatment related to her back injury. By decision dated May 18, 2017, it affirmed the March 17, 2016 termination of benefits. Appellant's prior claims are not presently before the Board.

In a narrative statement received on September 23, 2015, A.Y., appellant's supervisor and Associate Chief of Nursing, disputed appellant's allegation that she sustained a work-related injury on June 5, 2015 due to inconsistencies in her statement regarding how the injury occurred. The statement was addressed to A.D., a Human Resource Specialist. A.Y. reported that on June 9, 2015 she learned that appellant had left a message with call staff that she had sustained a work-related injury and would be out of work until approximately June 15, 2015. She reported that, as the manager, she was required to report the injury *via* a Form CA-1 and was confused as to why appellant did not contact her immediately. A.Y. informed the call staff that when she calls again, to let her know that she needed to speak to her. On June 15, 2015 appellant called A.Y. and reported that on the morning of June 6, 2015 she woke up and discovered that her foot/ankle was swollen, stating that it was probably because she went up and down the stairs too much. She informed A.Y. that she would be out of work for the rest of the week due to her foot/ankle injury and was undergoing x-rays on June 19, 2015. A.Y. noted that no Form CA-1 was initiated and appellant did not provide a medical note excusing her absence. She asked appellant why she did not take the elevator which was about 50 feet from her office door and appellant informed her it was faster to take the stairs. During the conversation, appellant denied falling/tripping, or having any acute injury of the foot/ankle, only insisting that it was because she took the stairs too much. A.Y. referred appellant to J.P. to complete the Form CA-1. Appellant spoke to J.P. that same date regarding the work-related injury. J.P. then contacted A.Y. regarding appellant's Form CA-1 and informed her that the injury occurred from tripping over duck feces. A.Y. did not see the typed statement of events until August 5, 2015, where appellant described the incident as stepping over a step that had duck droppings when she misjudged the landing area, and to prevent her fall twisted her ankle, shoulder, and back. She disputed the claim arguing that appellant provided inconsistent accounts of the work-related injury.

In another narrative statement received on September 23, 2015, appellant reported that she was coming down the outside steps at work and noticed some duck droppings all over the last step. She tried to step over it, but misjudged the landing area, causing her to twist her ankle, shoulder, and back. Appellant reported trying to hang on to the side rail to prevent herself from falling, but that resulted in her swinging around and hurting her shoulder to the point that she had to let go. Somehow she was able to twist her body and shuffle her feet to keep her balance to prevent from falling. Appellant reported having to drive home in pain with swelling of the right ankle in the Achilles area. She spent the weekend self-medicating and icing her ankle, shoulder, and back. Appellant's condition did not improve, causing her to call her doctor on Monday for an appointment which was scheduled the following day. She also noted treatment with Dr. Douglas J. Roger, a Board-certified orthopedic surgeon, who was already treating her for her prior workers' compensation back injury in OWCP File No. xxxxxx199.

In support of her claim, appellant submitted a June 15, 2015 x-ray of the right ankle, a July 2, 2015 magnetic resonance imaging (MRI) scan of the right ankle, and a medical visit summary documenting treatment on July 6, 2015.

In an August 10, 2015 medical report, Dr. Roger reported that appellant underwent an orthopedic evaluation for OWCP File No. xxxxxx199 and was last treated on July 13, 2015. Appellant stated that on June 5, 2015 she was descending an outside stairway at work when she misstepped at the bottom, causing her to twist and roll her right ankle. She reported holding on

to the railing with her right hand to keep from falling, twisting in an awkward fashion and straining and pulling her right shoulder and arm. Appellant sought treatment and underwent x-rays and an MRI scan, placing her off work until July 6, 2015. Dr. Roger provided examination findings and diagnosed right shoulder sprain/strain with possible internal derangement, lumbar spine sprain/strain, lumbar spinal stenosis, lumbar spine anterolisthesis at L4-5, lumbosacral radiculopathy, and right ankle sprain/strain.

By decision dated October 27, 2015, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the June 5, 2015 employment incident occurred as alleged. It noted that appellant's statement was wholly incomplete and contradicted by A.Y.'s statement. OWCP further reported that she failed to respond to the questions posed in the September 15, 2015 development letter, noting that her medical history included a prior work-related lumbar pathology.

On July 22, 2016 appellant, through counsel, requested reconsideration of OWCP's decision. Counsel argued that appellant's supplemental statement, as well as Dr. Steven Ma, a Board-certified orthopedic surgeon's June 1, 2016 medical report, established her work-related injury.

The record reflects that OWCP had referred appellant for a second opinion examination on June 1, 2016 with Dr. Ma for evaluation of her March 24, 2011 traumatic injury accepted for lumbar sprain and lumbosacral spondylosis (temporary aggravation) under OWCP File No. xxxxxx219. Appellant submitted Dr. Ma's June 1, 2016 report in support of this claim. Dr. Ma noted that on June 5, 2015 appellant was leaving work and while walking down steps, skipped the last step to avoid some droppings on the ground. In the process, she rolled her right ankle. Dr. Ma noted a prior 1989 right ankle fracture with surgery in 1990 and 1996. He further reported that appellant grabbed the rail with her right shoulder to prevent from falling and sustained increased low back pain, pain in the right ankle, and pain in the right shoulder. Dr. Ma noted a prior right shoulder rotator cuff tear in August 2012 from a motor vehicle accident. He reported that the June 5, 2015 incident was deemed nonindustrial by workers' compensation since she had missed a step deliberately to avoid droppings on a step. Dr. Ma reported that appellant continued to suffer from residuals of her work-related injury under OWCP File No. xxxxxx219 and that the August 2012 nonindustrial motor vehicle accident and injury to her back on June 5, 2015 worsened and aggravated her condition.

In a narrative statement received on July 19, 2016, appellant reported that she did not go into detail regarding her injury with A.Y. and told her that she hurt her ankle coming down the stairs by the emergency room (ER) parking lot. A.Y. asked her if she fell and she responded no. Appellant informed A.Y. that originally, she was not going to file a claim, but her claims examiner informed her that she should file a Form CA-1. Appellant stated that A.Y. seemed to be getting agitated that she was notified so late and she tried to lighten up the conversation by saying, "I'm not as young as I used to be, guess I can't run up and down the stairs like I used to." A.Y. proceeded to lecture her on the use of stairs stating that appellant should have used the elevator. At that point appellant realized that A.Y. had not been listening to her because the ER parking lot stairs were outside so she just responded okay because she wanted to get off the telephone and told her she would contact OWCP to file a Form CA-1, ending the telephone call.

Appellant noted that her office was on the fourth floor and she would not take four flights of stairs due to her back condition, explaining that when she would take any stairs she would have to go very slowly and place both feet on each stair to keep from jarring her back. She reported that during her brief telephone call, she never got to tell A.Y. the particulars of the injury and figured she would read them in her report. Appellant reported that she faxed her excuse from work medical documentation to A.Y. and that she could have called her if she had any questions. She further reported that she faxed a copy of the Form CA-1 with her July Form CA-7's to OWCP. In August, OWCP informed her that she had to come to the employing establishment and fill out the Form CA-1 in person on the computer with A.Y. In September, appellant had a driver take her on the 120-mile round trip to the office to fill out the form. When she arrived, A.Y. was not available and she was instructed to go see J.P. Appellant reported that she never spoke to J.P. until she came into the employing establishment office on September 9, 2015 to fill out the incident report, which was printed and provided to her on that date. She reported that all medical notes were faxed to the nursing supervisor suite on the day they were issued. Appellant concluded that she was unaware she had to file a Form CA-1 until an OWCP claims examiner informed her that she suffered a work-related injury. She had been trying to reach A.Y. since June 9, 2015 for Family and Medical Leave Act (FMLA) because she did not have enough leave to cover her time off. Every time she attempted to call A.Y. her telephone would ring and would not go to voice mail. She eventually called the specialist for the employing establishment to start the workers' compensation process.

In a second statement received on July 19, 2016, appellant provided a timeline of the events that occurred pertaining to her work injury beginning on June 5, 2015. She described the June 5, 2015 employment incident when she was walking down the outdoor ER stairs to the employee parking lot and tried to jump over the last step to avoid duck feces and misjudged the landing area, causing her to twist her ankle, shoulder, and back. After trying to self-medicate over the weekend, appellant called her physician on Monday, June 8, 2015 to schedule an appointment. She noted that she was not scheduled to work on Monday so she did not have to call out of work. Appellant's appointment was scheduled for June 9, 2015 and she called out of work informing the nursing supervisor on duty to pass the information to A.Y. After her appointment, she faxed her work a medical excuse slip for seven days. Appellant also attempted to call A.Y., but her telephone rang and did not go to voicemail. On June 15, 2015 she underwent an x-ray of the right ankle and was excused from work for another eight days pending the results of her MRI scan. Appellant faxed her sick slip to the nursing supervisor and requested the information be passed on to A.Y. as she still could not leave a message on her telephone. On June 17, 2015 she received an epidural steroid injection and on June 19, 2015 she faxed a sick slip to the nursing supervisor excusing her from work through June 26, 2015. Appellant requested that the message be passed along to A.Y. as she still could not leave a voicemail on her telephone.

On June 22, 2015 appellant began treatment with Dr. Rogers, who was her new physician for her previously accepted work-related back injury.[4] Dr. Rogers put her on temporary total disability for one month. On July 1, 2015 appellant's claims examiner called and left a voicemail about leave buy back from 2014, stating that she was only being compensated for two

[4] OWCP File No. xxxxxx199.

days as Dr. Roger did not address why her work status changed to temporary total disability. On July 9, 2015 appellant spoke with the claims examiner who informed her that Dr. Roger's report discussed her work-related back injury, but did not mention a new or worsening condition to place her on temporary total disability. She proceeded to tell him about the injury to her ankle, back, and shoulder on June 5, 2015. OWCP informed her that her injury was covered by workers' compensation because it occurred on the employing establishment's parking lot and that she needed to file a Form CA-1. On July 15, 2015 appellant contacted A.Y. and notified her of the work injury because the claims examiner informed her to file a Form CA-1. She reported that A.Y. seemed agitated that she had informed her so late so appellant told her that she would fax a copy of the Form CA-1 to OWCP. On August 4, 2015 OWCP notified appellant that she had to come to the claims examiner's office at the employing establishment and fill out the Form CA-1 in person. On September 9, 2015 appellant had someone drive the 120 miles round trip to fill out the incident report. A.Y. was unavailable so J.P. assisted her in filing the form. Appellant went on to note subsequent dates she sought medical treatment for her injuries. In support of her claim, she submitted numerous medical reports documenting treatment for her back, ankle, and shoulder.

In a December 21, 2015 medical report, Dr. David Friscia, a Board-certified orthopedic surgeon, reported that appellant complained of right foot and ankle pain, noting that she was without any complaint since June. He reported that appellant worked as a nurse and slipped while walking on a stone near the pond, causing her ankle to swell with complaints of tenderness along the Achilles tendon and constant throbbing. Dr. Friscia reviewed a right ankle x-ray and MRI scan and diagnosed Achilles tendinitis of right lower extremity, right talonavicular joint spur, right posterior Achilles spur, and sprain of right ankle.

By decision dated August 25, 2016, OWCP denied modification of the October 27, 2015 decision finding that the evidence of record failed to establish that the June 5, 2015 employment incident occurred, as alleged. It noted that the claim was denied based on A.Y.'s statement that appellant originally reported a different mechanism of injury.

On August 30, 2016 appellant, through counsel, requested reconsideration of the August 25, 2016 OWCP decision and submitted additional medical reports in support of her claim. In a June 9, 2015 excuse notice for work, her physician indicated that she was treated on that date and could not return to work for seven days.

By letter dated September 2, 2016, counsel noted submission of additional narrative statements by appellant which provided greater detail and confirmation regarding the June 5, 2015 employment incident. He further noted submission of a statement from appellant's roommate, who could confirm that appellant provided her the same explanation of injury that she did to OWCP.

In a September 1, 2016 witness statement, appellant's roommate reported that on June 5, 2015 appellant arrived home from work limping and could barely touch down her right foot. Appellant informed her that she was heading to the parking lot leaving work and overstepped the bottom step to avoid duck poop, causing her to twist her ankle, shoulder, and back. She was in pain and spent the weekend icing her injuries and self-medicating without improvement. On

Monday appellant called her doctor and got an appointment for the following day which her roommate drove her to.

In another September 1, 2016 narrative statement, appellant repeated her allegations surrounding the alleged June 5, 2015 work injury and refuted statements made by A.Y. pertaining to an incorrect account of the incident, treatment, and dates surrounding the aftermath of the incident.

By decision dated November 30, 2016, OWCP denied modification of the August 25, 2016 decision, finding that the evidence of record failed to establish that June 5, 2015 employment incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[8] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.[9] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden

[5] *Supra* note 2.

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Elaine Pendleton*, *supra* note 6.

[9] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

of proof to establish that any subsequent medical condition or disability from work, for which he or she claims compensation is causally related to the accepted injury.[10]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[11]

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish a traumatic injury on June 5, 2015.

The evidence of record casts serious doubt on the validity of appellant's claim as the inconsistencies in her statements fail to establish that the June 5, 2015 employment incident occurred, as alleged.[12] Appellant provided multiple narrative statements describing the June 5, 2015 employment incident when she was walking down the outdoor ER stairs to the employee parking lot. She recounted that she tried to jump over the last step to avoid duck feces, and misjudged the landing area, causing her to twist her ankle, shoulder, and back. Appellant reported trying to hang on to the side rail to prevent her from falling, which resulted in swinging around and hurting her shoulder to the point that she had to let go. Somehow she was able to twist her body and shuffle her feet to keep her balance to prevent from falling.

Appellant's supervisor, A.Y., contested her version of the events. She reported that she was notified that appellant called out of work on June 9, 2015 due to a work-related injury with no further detail. A.Y. reported speaking to appellant on June 15, 2015 who notified her that she discovered a swollen ankle/foot on June 6, 2015. Appellant informed her that it was probably because she went up and down the stairs too much. A.Y. asked appellant why she did not take the elevator which was about 50 feet from her office door and appellant informed her it was faster to take the stairs. During the conversation, appellant denied falling/tripping, or having any acute injury of the foot/ankle, only insisting that it was because she took the stairs too much.

Appellant disputed A.Y.'s version of events stating that she did not speak to her until July 15, 2015 regarding the work-related incident. A.Y. alleged this conversation happened one month earlier on June 15, 2015. In her July 19, 2016 narrative statement, appellant reported that she did not go into detail regarding her injury with A.Y., informing her that she hurt her ankle coming down the stairs by the ER parking lot. A.Y. began to lecture her on the use of stairs stating that appellant should have used the elevator. At that point appellant realized that A.Y.

[10] *Supra* note 8.

[11] *Betty J. Smith*, 54 ECAB 174 (2002).

[12] *T.R.*, Docket No. 12-0012 (issued May 16, 2012).

had not been listening to her because the ER parking lot stairs were outside so she just responded affirmatively because she wanted to get off the telephone.

Appellant argued that A.Y. did not hear her correctly because her office is on the fourth floor and she would not take four flights of stairs due to her back condition. She explained that when she would take any stairs she would have to go very slowly and place both feet on each stair to keep from jarring her back. The Board notes that appellant's account pertaining to her cautious use of stairs does not correlate with the events surrounding the alleged June 5, 2015 employment incident. Appellant's description of the June 5, 2015 employment incident is inconsistent with the limitations she describes pertaining to her physical capabilities.

The Board further notes that appellant's Form CA-1 was not filed until September 9, 2015. Appellant explained the delay in filing because she was unaware that the alleged June 5, 2015 employment incident was covered by workers' compensation since it occurred in the employee parking lot when she was leaving work. She only discovered it was a work-related injury on June 9, 2015 after speaking with OWCP regarding her claim. The record reflects that on October 7, 2008 appellant had previously filed a Form CA-1 alleging a September 18, 2008 medial collateral tear of the left knee and muscle strain when gravel and sand were covering an oil spill in the parking garage, OWCP File No. xxxxxx821. While OWCP denied the claim for failing to establish a firm medical diagnosis, it accepted the incident as having occurred in the performance of duty. The Board is not moved by appellant's argument that she did not know the June 5, 2015 employment incident was covered under workers' compensation as she had previously filed a claim for a traumatic injury which occurred prior to the start of her work shift in an employee parking lot.

The medical evidence of record further casts serious doubt upon the validity of appellant's claim as her allegations are inconsistent with surrounding facts and circumstances.[13] Appellant first sought medical treatment on June 9, 2015. However, the only medical evidence of record provided from that date was an excuse from work note with no mention of the work-related incident or the specific injuries treated. Given that appellant had two prior workers' compensation injuries for which she was undergoing treatment, the record remains unclear if she was seeking treatment for her previously accepted work-related injuries or a new injury resulting from the alleged June 5, 2015 employment incident.

While the reports of Dr. Roger and Dr. Ma discuss the circumstances surrounding the alleged June 5, 2015 employment incident, the physician's evaluations pertained to appellant's prior workers' compensation OWCP File Nos. xxxxxx199 and xxxxxx219. Furthermore, the medical evidence of record establishes that appellant has prior injuries to the right shoulder, back, and ankle which predate this claim, casting further doubt on the circumstances surrounding her injury.

Dr. Friscia's December 21, 2015 medical report also casts serious doubt on the validity of appellant's claim as the physician reported that appellant was without right foot and ankle pain since June 2015. He noted that appellant recently complained of right foot and ankle pain and described a different mechanism of injury, reporting that she worked as a nurse and slipped while

[13] *M.W.*, Docket No. 12-1013 (issued October 24, 2012).

walking on a stone near the pond, causing her ankle to swell with complaints of tenderness along the Achilles tendon and constant throbbing. Dr. Friscia's December 21, 2015 medical report contradicts appellant's account of a June 5, 2015 work-related injury.[14] As such, the medical evidence of record fails to support the surrounding facts and circumstances.[15]

While appellant has provided additional detail regarding the claimed June 5, 2015 employment incident, it is insufficient to establish that the incident occurred as alleged. The employing establishment controverted the claim and indicated that appellant provided different accounts regarding the June 5, 2015 employment incident. Appellant's roommate's September 1, 2016 statement attested to the surrounding events once appellant arrived home following her injury on June 5, 2015. The Board notes that the roommate did not witness the alleged work-related injury and her statement was submitted more than one year after the alleged incident occurred. As there were no witness statements provided in support of appellant's claim and no contemporaneous statements from persons present at the employing establishment supporting that the incident occurred as alleged, appellant has failed to establish that the incident occurred in the time, place, and manner alleged.[16]

The Board finds that based on appellant's Form CA-1 and narrative statements, her supervisor's statement, and the remaining factual and medical evidence of record, that there are inconsistencies that cast serious doubt upon the validity of appellant's claim. As appellant has not reconciled these contradictions in the record, the Board finds that she has not met her burden of proof to establish that she experienced an injury in the performance of duty on June 5, 2015, as alleged.[17]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on June 5, 2015, as alleged.

[14] *C.f. S.A.*, Docket No. 10-1786 (issued May 4, 2011) (where the Board found that appellant established that the incident occurred as alleged, as there were no inconsistent statements from appellant or other evidence refuting the occurrence of the alleged incident).

[15] *R.M.*, Docket No. 11-1921 (issued April 10, 2012).

[16] *B.W.*, Docket No. 13-0244 (issued May 13, 2013) (while an injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and his or her subsequent course of action).

[17] Given that appellant has not established an employment incident, further consideration of the medical evidence is unnecessary. *See Bonnie A. Contreas*, 57 ECAB 364, 368 n. 10 (2006).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated November 30, 2016 is affirmed.

Issued: December 27, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board